Re:

Preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 39 EC and 56 EC — Determination of the taxable amount for purposes of income tax — National of a Member State receiving all of his income in that State but residing in a different Member State — National legislation which does not allow for deduction of negative income relating to a house situate in another Member State

Operative part of the judgment

Article 39 EC must be interpreted as precluding national legislation such as that at issue in the main proceedings, pursuant to which a Community national who is not resident in the Member State in which he receives all or almost all of his taxable income cannot, for the purposes of determining the basis of assessment of that income in that Member State, deduct negative income relating to a house owned by him and used as a dwelling in another Member State, whereas a resident of the first Member State may deduct such negative income for the purposes of determining the basis of assessment of taxation of his income.

([1]) OJ C 56, 10.3.2007.

Judgment of the Court (Second Chamber) of 16 October 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-136/07) ([1])

(Failure of a Member State to fulfil obligations — Directives 89/48/EEC and 92/51/EEC — Recognition of diplomas and professional education and training — Profession of air traffic controller)

(2008/C 313/07)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk and R. Vidal Puig, acting as Agents)

Defendant: Kingdom of Spain (represented by: M Muñoz Pérez, Agent)

Re:

Failure of Member State to fulfil its obligations — Infringement of Council Directives 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) and 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25) — Taking up the profession of air traffic controller.

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, in connection with the profession of air traffic controller, the laws, regulations and administrative provisions necessary to comply with Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration and Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48, the Kingdom of Spain has failed to fulfil its obligations under those directives;*

2. *Orders the Kingdom of Spain to pay the costs.*

([1]) OJ C 117, 26.5.2007.

Judgment of the Court (Fourth Chamber) of 23 October 2008 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt für Körperschaften III in Berlin v Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt GmbH

(Case C-157/07) ([1])

(Freedom of establishment — European Economic Area Agreement (EEA) — Tax legislation — Tax treatment of losses incurred by a permanent establishment situated in a Member State of the EEA and belonging to a company having its seat in a Member State of the European Union)

(2008/C 313/08)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt für Körperschaften III in Berlin

Defendant: Krankenheim Ruhesitz am Wannsee-Seniorenheimstatt GmbH

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 31 of the Agreement on the European Economic Area (OJ 1994 L 1, p. 1) — Double taxation convention which provides for taxation of profits made by a branch office in the State where it is established — Deduction from taxable profit of company principal office of branch office losses — No possibility for branch office to carry over fiscal losses to a subsequent period of assessment — Reintegration by State where company principal office established of total deducted losses of branch office

Operative part of the judgment

Article 31 of the Agreement on the European Economic Area of 2 May 1992 does not preclude a national tax system which, after having allowed the taking into account of losses incurred by a permanent establishment situated in a State other than the one in which its principal company is situated, for the purposes of calculating the tax on that company's income, provides for a tax reintegration of those losses at the time when that permanent establishment makes profits, where the State where that same permanent establishment is situated does not confer any right to carry forward losses incurred by a permanent establishment belonging to a company established in another State, and where, under a convention for the prevention of double taxation between the two States concerned, the income of such an entity is exonerated from taxation in the State in which the principal company has its seat.

([1]) OJ C 129, 9.6.2007.

Judgment of the Court (Grand Chamber) of 21 October 2008 (references for preliminary rulings from the Corte suprema di cassazione (Italy)) — Alfonso Luigi Marra v Eduardo De Gregorio (C-200/07), Antonio Clemente (C-201/07)

(Joined Cases C-200/07 and C-201/07) ([1])

(Reference for a preliminary ruling — European Parliament — Leaflet issued by a Member of the European Parliament containing insulting remarks — Claim for non-pecuniary damages — Immunity of Members of the European Parliament)

(2008/C 313/09)

Language of the cases: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Alfonso Luigi Marra

Respondents: Eduardo De Gregorio (C-200/07), Antonio Clemente (C-201/07)

Re:

Reference for a preliminary ruling — Corte suprema di cassazione — Interpretation of Article 9 of the Protocol on the Privileges and Immunities of the European Communities (OJ 1967 152, p. 13) and Rule 6(2) of the Rules of Procedure of the European Parliament (OJ 2005 L 44, p. 1) — Claim for non-pecuniary damages in relation to insulting remarks made by a Member of the European Parliament — Competence of the civil court to rule as to the existence or otherwise of privilege in the absence of a decision of the European Parliament

Operative part of the judgment

The Community rules relating to the immunity of Members of the European Parliament must be interpreted as meaning that, in an action for damages brought against a Member of the European Parliament in respect of opinions he has expressed,

— *where the national court which has to rule on such an action has received no information regarding a request by that Member to the European Parliament seeking defence of the immunity provided for in Article 9 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965, it is not obliged to request the European Parliament to give a decision on whether the conditions for that immunity are met;*

— *where the national court is informed of the fact that that Member has made a request to the European Parliament for defence of that immunity, within the meaning of Rule 6(3) of the Rules of Procedure of the European Parliament, it must stay the judicial proceedings and request the European Parliament to issue its opinion as soon as possible;*

— *where the national court considers that that Member enjoys the immunity provided for in Article 9 of the Protocol on the Privileges and Immunities of the European Communities, it is obliged to dismiss the action brought against the Member concerned.*

([1]) OJ C 229, 17.9.2005.